

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF PENNSYLVANIA**

<b>CODY SUMMERS,</b>	:	
	:	
<b>Plaintiff</b>	:	
	:	
<b>v.</b>	:	<b>CIVIL ACTION NO. 3:18-1246</b>
	:	
<b>BLAKELY BOROUGH,</b>	:	<b>(MANNION, D.J.)</b>
<b>OFFICER SEAN CHORBA,</b>	:	<b>(ARBUCKLE, M.J.)</b>
<b>OFFICER J. TODD and</b>	:	
<b>MDJ LAURA TURLIP,</b>	:	
	:	
<b>Defendants</b>	:	
	:	

**ORDER**

Pending before the court is the report of Magistrate Judge William I. Arbuckle which recommends that defendant Turlip's motion to dismiss be granted and she be dismissed as a party in this case. (Doc. 23). The plaintiff has failed to file objections to Judge Arbuckle's report.<sup>1</sup> Upon review, Judge Arbuckle's report will be adopted.

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<sup>1</sup>Apparently in response to Judge Arbuckle's report, the plaintiff filed an amended complaint. (Doc. 25). The filing of an amended complaint in response to a report and recommendation is procedurally improper. The plaintiff was advised by notice attached to Judge Arbuckle's report that, if he had objections to the report, he must file written objections identifying the portion of the proposed findings, recommendations or report to which he objected and the basis for such objection. (Doc. 23, Attachment). Moreover, although the plaintiff may file an amended complaint once as a matter of course 21 days after service of a motion under Fed.R.Civ.P. 12(b), Fed.R.Civ.P. 15(a)(1)(B), the plaintiff's amended complaint fell outside of this time limitation.

When no objections are filed to a report and recommendation, the court should, as a matter of good practice, “satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” Fed. R. Civ. P. 72(b), advisory committee notes; see also Univac Dental Co. v. Dentsply Intern., Inc., 702 F.Supp.2d 465, 469 (M.D.Pa. 2010) (citing Henderson v. Carlson, 812 F.2d 874, 878 (3d Cir. 1987) (explaining judges should give some review to every report and recommendation)). Nevertheless, whether timely objections are made or not, the district court may accept, not accept, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. 28 U.S.C. §636(b)(1); Local Rule 72.31.

The plaintiff filed the instant action, in part, against defendant Turlip, who is a Lackawanna County Magisterial District Judge. The only allegations against defendant Turlip relate to her actions as the presiding judicial officer over the plaintiff’s underlying state criminal proceedings. The plaintiff does not allege any actions by defendant Turlip outside of her role as a magisterial district judge. As a result, defendant Turlip filed a motion to dismiss the plaintiff’s complaint based upon judicial immunity. (Doc. 13). When the plaintiff failed to respond to defendant Turlip’s motion to dismiss, Judge Arbuckle issued an order directing him to do so. (Doc. 15). As of the date of Judge Arbuckle’s report, the plaintiff had failed to respond to defendant Turlip’s motion to dismiss. Judge Arbuckle issued the instant report, in which he

recommends that defendant Turlip's motion to dismiss be granted on the basis of judicial immunity. The court has reviewed the record in this case and agrees with the sound reasoning which is the basis of Judge Arbuckle's recommendation. Therefore, the court will adopt the report of Judge Arbuckle recommending that defendant Turlip's motion to dismiss be granted and she be dismissed as a defendant in this case.<sup>2</sup>

**NOW, THEREFORE, IT IS HEREBY ORDERED THAT:**

- (1) The report of Judge Arbuckle, **(Doc. 23)**, is **ADOPTED** to the extent that it is recommended that defendant Turlip's motion to dismiss be granted on the basis of judicial immunity.
- (2) Defendant Turlip's motion to dismiss, **(Doc. 13)**, is **GRANTED**.
- (3) The plaintiff's claims against defendant Turlip are **DISMISSED IN THEIR ENTIRETY**.

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<sup>2</sup>In the alternative, Judge Arbuckle recommends that dismissal of the plaintiff's complaint against defendant Turlip is proper under Fed.R.Civ.P. 41. Since the court finds that defendant Turlip is entitled to judicial immunity, the court need not address the alternative basis for Judge Arbuckle's report.

- (4) The instant action is **REMANDED** to Judge Arbuckle for consideration of the remaining motions to dismiss, as well as all further pre-trial proceedings.

*Malachy E. Mannion*  
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**MALACHY E. MANNION**  
United States District Judge

**Date: January 15, 2019**

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